



TEXAS ALCOHOLIC BEVERAGE COMMISSION

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W.S. McBeath, Administrator

March 12, 1991

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Opinion Committee

The Honorable Dan Morales
Attorney General of Texas
Supreme Court Building
Austin, Texas 78711

ATTENTION: Opinions Committee

Dear General Morales:

This is a request for your formal opinion on the following matter.

Some employees of this agency are members of the Texas Alcoholic Beverage Commissioned Officers Association (TABCOA). It is our understanding that the membership of TABCOA is principally or exclusively composed of employees of the Texas Alcoholic Beverage Commission (TABC) who are commissioned peace officers.

TABC is a state agency. It regulates and licenses those who are engaged in the sale, service, transportation and storage of alcoholic beverages in Texas.

TABCOA is not a state agency. It is an association of employees separate and apart from TABC. TABC neither encourages nor discourages membership of its employees in TABCOA.

Question No. 1. Will TABC employees who are members of TABCOA be in violation of the law if TABCOA:

- (a) Solicits or accepts contributions of money (or other things of value) from persons licensed by TABC?
- (b) Sells advertising in a newsletter or sells subscriptions to a newsletter to persons licensed by TABC to raise funds for TABCOA?

We are especially concerned with Section 36.08(a) of the Texas Penal Code. The defenses in Section 36.10 do not seem to apply. Does it make a difference if TABCOA hires professional solicitors?

We are also concerned with Article 6252-9b, Section 8, Subsection (a), VTCS. None of the TABC members of TABCOA are required to file reports with the Secretary of State under this Article. We are not clear what kind of penalty or sanction, if any, is contemplated under this Article for state employees who are not required to file.

We have found no case law, Attorney General Opinions, or State Ethics Advisory Commission Opinions which appear to us to clearly address these issues.

Question No. 2. May TABC employees who are members of TABCOA solicit funds (or sell subscriptions, or sell advertising) to raise funds for TABCOA from persons who are not licensed by TABC and be paid a commission by TABCOA for each sale or successful solicitation?

Again, we are concerned with the possible implications of Section 36.08 of the Texas Penal Code and Article 6252-9b, VTCS, but cannot identify express language which either condemns or allows such conduct.

Question No. 3. May TABC prohibit membership in TABCOA by TABC employees, or restrict participation by TABC employees in TABCOA if such membership or participation is not otherwise prohibited by law?

We are not aware of any authority to restrict or prohibit membership or participation in any such organization. On the contrary, we perceive the right of employee association to be protected by well-settled law.

However, since TABC has an obligation to the public, to its employees, and to the licensed persons we regulate, we felt this last question should be expressly addressed in this context.

Your valued guidance in this very sensitive area will be deeply appreciated.

Sincerely,



W. S. McBeath

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